Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

JAMES H. RANSOM,

Petitioner,

v.

CSC CONSULTING, INC. d/b/a CSC INDEX,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

What standard should the lower courts use to review an employer's comment expressing a preference for younger workers to determine whether the comment presents a triable issue of age-based animus?

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Petitioner, James H. Ransom, respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at *Ransom v. CSC Consulting, Inc.*, 217 F.3d 467 (7th Cir. Ill. 2000) (App. A). The opinion of the district court in *Ransom v. CSC Consulting, Inc.* is not published, but can be found at 1999 U.S. Dist. LEXIS 11148 (N.D. Ill. 1999) (App. C).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit ("Court of Appeals") was entered on June 16, 2000. The Court of Appeals denied a timely petition for rehearing on July 27, 2000. (App. B).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, provides in relevant part at § 623:

> (a) Employer practices It shall be unlawful for an employer —
>
> > (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
> >
> > (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
> >
> > (3) to reduce the wage rate of any employee in order to comply with this chapter.

STATEMENT OF THE CASE

James H. Ransom ("Ransom") filed this action against CSC Consulting, Inc. d/b/a CSC Index ("CSC") on January 15, 1998, alleging that CSC fired him because of his age in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.* ("ADEA"). CSC is a management consulting firm and Ransom was an officer of CSC before he was fired. Ransom was fifty-six years old when he was terminated. The district court granted CSC summary judgment on July 14, 1999. The Court of Appeals affirmed on June 16, 2000 and denied Ransom's petition for rehearing en banc on July 27, 2000.

Ransom deposed Douglas Gray ("Gray"), the Chief Executive Officer of CSC who made the decision to terminate Ransom. In his deposition Gray was asked if newly-made officers were treated preferentially [as compared to other officers] in the October 1997 reduction in force[1]

> Q. Were newly-made officers treated differently by the management committee, when the management committee discussed the October adjustment?
>
> A. Yes.
>
> Q. Why?

---

1. Ransom was terminated as part of the October 1997 reduction in force, which Gray referred to euphemistically as a "performance based capacity adjustment" or "adjustment" for short. (Gray Dep., p. 87.)

A. Well, if you're going to promote a principal to officer, you can't perfectly hold them accountable to officer performance for at least a couple of years into their tenure as officers. And we wouldn't have promoted them if we were going to then terminate them. That's sort of inconsistent behavior, management behavior. So by definition in our model, we really had to exempt them from that process. Now, the model is more dynamic than that because we knew we were going promote certain people in October, but if we did, the model would have — we would have — we would have built the economic model and the leverage model assuming that those people were going to be officers. And so therefore, other people, less productive people, would have to go. So it was a constant tension, when you're in a declining business, as to how many to promote, how many not to promote, so forth.

Q. But nonetheless, the desire to continue promoting people continues to exist, even in a declining environment?

A. Right, that's correct.

Q. Why is that?

A. Because it if the young people in the organization don't see a future, they're going to leave, number one. Number two, the younger people in the organization looked at the officers in the organization as the ones responsible for putting the organization in the mess that it was

> in. So the younger people, right or wrong, the younger people in the organization look at the officers and say, these are the people who put us in the position we're in now. They can't be that good. So A) in order to provide — keep the younger people from leaving, and B) presumably to refresh the officer group, you've got to have people coming in. So that's the reason for it.
>
> Q. And the people coming in create pressures to eliminate some officers to create new spots —
>
> A. That's always been the way. . . .

(App. A at 5a).

In the trial court and Court of Appeals, Ransom argued that Gray's preference for younger officers, as reflected in his testimony, constituted direct evidence of age discrimination under the "direct method" of proving age discrimination borrowed from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). CSC disagreed arguing that, when correctly interpreted, Gray's testimony is innocuous and evinces no age-based animus.

During oral argument before the Court of Appeals, Ransom relied on the court's rule against "disambiguating" testimony on a motion for summary judgment. *Shager* v. *UpJohn Company*, 913 F.2d 398, 402 (7th Cir. 1990). Ransom argued that because there are two plausible interpretations of Gray's testimony, one which supplies direct evidence of age discrimination and one which does not, then the question is to be resolved at trial and not on summary judgment.

Without addressing the rule against "disambiguating," the Court of Appeals adopted CSC's preferred interpretation of Gray's testimony and affirmed the district court's order granting summary judgment.

REASONS FOR GRANTING THE WRIT

The Court should grant the writ because Mr. Ransom is a victim of muddled law. The District Court and Court of Appeals erroneously substituted their own judgment as to the inferences to be drawn from Gray's testimony and did not determine whether a reasonable jury could find that the testimony evinced an age-based animus.

Cases like Mr. Ransom's are particularly vulnerable to this form of error. Sometimes referred to as "stray comment" cases, such cases typically will involve evidence that a supervisor made a remark favoring younger employees or disfavoring older employees. Questions whether the remark was inappropriately directed to the plaintiff and connected to the challenged employment decision will exist. Although these are questions that a jury is uniquely well qualified to answer, the trial court often will have its own opinion. Recent "stray comment" decisions show that summary judgement often is granted and affirmed without reference to the traditional standard of whether a rational jury could find that the statement evidenced an age-based animus or nexus to the employment decision.

In "stray comment" cases decided since January 1, 2000, the Courts of Appeals have affirmed summary judgment ten times. *Casey v. City of St. Louis*, 212 F.3d 385 (8th Cir. 2000); *Cruz-Ramos v. Puerto Rico Sun Oil Co.*, 202 F.3d 381 (1st Cir. 2000); *Stone v. Autoliv ASP, Inc.*, 210 F.3d

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A similar pattern exists in the district courts. Since January 1, 2000, district courts have granted summary judgment in eighteen "stray comment" cases. *Terry v. U.S. Immigration and Naturalization Service*, 2000 U.S. Dist. LEXIS 1748; *Olefsky v. William Grant & Sons, Inc.*, 2000 U.S. Dist. LEXIS 2692; *Beeck v. Federal Express Corp.*, 81 F. Supp. 2d 48 (D.D.C. 2000); *Mello v. Calais Regional Hosp.*, 2000 U.S. Dist. LEXIS 2852; *Rai v. Dynagear, Inc.*, 2000 U.S. Dist. LEXIS 11448; *Schaffner v. Glencoe Park District*, 2000 U.S. Dist. LEXIS 7115; *Britton v. City of Poplar Bluff, Missouri*, 2000 U.S. Dist. LEXIS 5935; *Potter v. Xerox Corp.*, 88 F. Supp. 2d 109 (W.D.N.Y. 2000), 82 Fair Empl. Prac. Cas (BNA) 1116; *Butcher, et al. v. Gerber Products Co.*, 88 F. Supp. 2d 788 (W.D. Mich. 2000); *Rayl v. Fort Wayne Community Schools*, 87 F. Supp. 2d 870 (N.D. Ind. 2000); *Hallman v. Reynolds Metals Co.*, 2000 U.S. Dist. LEXIS 8610; *Smith v. Board of County Commissioners of Johnson County, Kansas*, 96 F. Supp. 2d 1177 (D. Kan. 2000); *Emanuel v. Oliver, Wyman & Co., LLC*,

85 F. Supp. 2d 321 (S.D.N.Y. 2000); *Rayburn-Duitman v. South Bend Tribune Corp.*, 2000 U.S. Dist. LEXIS 6980; *Levine v. Baras Jersey, Inc.*, 2000 U.S. Dist. LEXIS 604; *Irvine v. Video Monitoring Services of American, L.P.*, 2000 U.S. Dist. LEXIS 5461; *Grafton v. Sears & Pest Control, Inc.*, 2000 U.S. Dist. LEXIS 4966; and *Lincoln v. Momentum Systems Ltd.*, 86 F. Supp. 2d 421 (D.N.J. 2000). Only six of those cases cited the reasonable jury standard. *Schaffner v. Glencoe Park District*, 2000 U.S. Dist. LEXIS 7115 at *8; *Britton v. City of Poplar Bluff, Missouri*, 2000 U.S. Dist. LEXIS 5935 at *7; *Emanuel v. Oliver, Wyman & Co., LLC*, 85 F. Supp. 2d 321, 327 (S.D.N.Y. 2000); *Rayburn-Duitman v. South Bend Tribune Corp.*, 2000 U.S. Dist. LEXIS 6980 at *12; *Irvine v. Video Monitoring Services of American, L.P.*, 2000 U.S. Dist. LEXIS 5461 at *9; and *Grafton v. Sears & Pest Control, Inc.*, 2000 U.S. Dist. LEXIS 4966 at *11.

Lower courts are not deciding "stray comment" summary judgment cases uniformly using the correct legal standard. Mr. Ransom is a victim of this inconsistency.

This Court's opinion in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S. Ct. 2097 (2000) will not settle the question. In *Reeves*, the Court stated a strong preference for jury determination of "sensitive and difficult" issues relating to causation and the employer's decision making process. *Reeves*, citing *Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711, 716 (1983). However, because *Reeves* involved a motion for judgment as a matter of law after a trial where the plaintiff proved age discrimination using the indirect method of proof, *Reeves* is not controlling in the far more common situation exemplified by Mr. Ransom's case. If this Court intended its preference for jury trials to apply in cases like Mr. Ransom's, then the Court of Appeals' opinion in Mr. Ransom's case is at odds with that intent.

The Court of Appeals opinion in Mr. Ransom's case is also at odds with its own rule that "disambiguating" testimony — choosing between two competing interpretations — is for trial, not summary judgment. *Shager*, 913 F.2d at 402. *See also Miller v. Borden, Inc.*, 168 F.3d 308, 312 (7th Cir. 1999).

Compare *Wichmann v. Board of Trustees*, 180 F.3d 791 (7th Cir. 1999), *vacated on other grounds*, 120 S. Ct. 929 (2000). There Wichmann's supervisor said one month before Eichmann's termination: "Think of it like this. In a forest you have to cut down the old, big trees so the little trees underneath can grow." 180 F.3d at 801.

After a jury verdict in favor of Wichmann, the Court declined to disturb the verdict yielding to the jury's ability to decide the correct interpretation of the proffered statement:

> We think that a rational jury might have accepted the University's innocuous explanation that the "old trees" remark was made to reassure the troubled employees about the reorganization. But a rational jury could also infer illegal motivation from [the] statement in the context in which it was made. *Id.*

The approach taken by the Court of Appeals in Mr. Ransom's case can not be reconciled with *Wichmann* or with the preference stated in *Reeves* for juries to resolve questions of intent and causation. Instead of reserving the question for trial, the Court of Appeals substituted its own judgment as to which of the two competing interpretations of Gray's testimony is most plausible: "[t]hese comments *may* be viewed as general observations about corporate behavior rather than as a direct explanation about Ransom's

termination." App. A at 5a (emphasis supplied). Of course, and this is the point of *Wichmann* (and *Reeves* if it applies), the comments might just as plausibly be viewed as an admission that Gray terminated Ransom because he wanted to create new spots for younger officers.

The Court of Appeals willingness to accept CSC's innocuous explanation that Gray was musing about "business truisms" is difficult to fathom. That a highly sophisticated witness represented by aggressive and capable counsel was merely sharing "general observations about corporate behavior" during a federal court deposition relating to Ransom's termination seems unlikely. It is far more plausible that Gray was simply being candid, that he felt a need to terminate older officers like Ransom to create new spots for younger officers "in order to provide — keep the younger people from leaving, and B) presumably to refresh the officer group." (App. A at 5a).

The Court of Appeals decision to embrace a construction of Gray's testimony that, by its own admission requires one to assume that Gray was speaking "inartfully" (App. A at 6a), flies in the face of both the rule that in reviewing a decision on summary judgment the facts are considered in the light most favorable to the non-moving party, *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-555 (1990), and the rule that in discrimination cases jury determinations are preferred. *Reeves*, citing *Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711, 716 (1983) (jury is better able to decide "sensitive and difficult" issues relating to causation and the employer's decision making process); *Wichmann*, 180 F.3d at 800 (a jury's credibility determination will be disturbed only if no rational jury could have found for an age discrimination plaintiff; rule applied "stringently").

The Court of Appeals opinion adopting CSC's preferred construction of Gray's testimony is against well-reasoned jurisprudence requiring that courts should defer to juries on questions concerning the interpretation and weight to be accorded a "stray comment" in age discrimination litigation.

CONCLUSION

This case presents a question of exceptional importance. If the opinion below is allowed to stand, Ransom will have been the denied the protection conferred upon him by the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, and will forever suffer the consequences of a decision that is inconsistent with the law. The Court can correct the Court of Appeals decision, a decision that is at odds with this Court's established law as to direct evidence of age discrimination under the "direct method" of proving age discrimination, by granting Ransom's petition for certiorari.

For the foregoing reasons, Ransom respectfully requests that this Court grant the writ of certiorari and review the opinion of the Court of Appeals.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AND DECIDED JUNE 16, 2000

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 99-2967

JAMES H. RANSOM,

Plaintiff-Appellant,

v.

CSC CONSULTING, INC., D/B/A CSC INDEX,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 98 0244 — **David H. Coar**, *Judge.*

ARGUED FEBRUARY 8, 2000 — DECIDED JUNE 16, 2000

Before CUDAHY, MANION, and DIANE P. WOOD, *Circuit Judges.*

MANION, *Circuit Judge.* James Ransom, a highly-paid consultant, sued his former employer, CSC Consulting, Inc., under the Age Discrimination in Employment Act, claiming that CSC fired him because of his age. The district court granted CSC summary judgment. Ransom appeals, and we affirm.

Appendix A

I. Factual Background

James Ransom began working for CSC in 1993 as an independent contractor. In 1996, when he was 55, CSC hired Ransom to work in its Chicago office as a vice-president at a base salary of $360,000. In March 1997, CSC's president announced a new turnaround strategy for CSC, and as part of this strategy CSC fired some of its vice presidents and required the remaining officers to both manage and sell CSC's consulting services. A few months later, CSC's management team decided to eliminate poorly performing officers from the company; to evaluate performance, the management team looked at the officers' sales performance targets, progress in achieving those goals, and revenues.

On September 19, 1997, CSC's CEO, Douglas Gray, fired Ransom, who was then 56. Claiming that he was fired because of his age, Ransom sued CSC under the ADEA. CSC moved for summary judgment, arguing that it fired Ransom for a legitimate non-discriminatory reason — his failure to meet performance targets. The district court granted CSC's motion. Ransom appeals.

II. Analysis

We review de novo a decision on summary judgment, considering the facts in the light most favorable to the non-moving party. *Miller v. Borden, Inc.*, 168 F.3d 308, 312 (7th Cir. 1999). Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.* Against this well-established backdrop, we consider Ransom's age discrimination case.

Appendix A

Ransom sued under the ADEA, which prohibits intentional discrimination against persons age 40 or over. 29 U.S.C. § 621(b). *Cengr v. Fusibond Piping Systems, Inc.*, 135 F.3d 445, 450 (7th Cir. 1998). To prove age discrimination, a plaintiff may proceed under either the direct or indirect method. Here, Ransom attempts both — he contends that CEO Gray's deposition testimony directly evidences an age animus, and that that same inference arises under the *McDonnell Douglas* burden-shifting (indirect) approach. 411 U.S. 792 (1973).

We begin with the direct case. "Direct evidence 'must not only speak directly to the issue of discriminatory intent, it must also relate to the specific employment decision in question.' " *Baron v. City of Highland Park*, 195 F.3d 333, 339 (7th Cir. 1999) (quoting *Randle v. LaSalle Telecommunications, Inc.*, 876 F.2d 563, 569 (7th Cir. 1989)). Ransom cites the following deposition testimony given by CEO Gray as direct evidence of age discrimination:

> Q. Were newly-made officers treated differently by the management committee, when the management committee discussed the October adjustment?
>
> A. Yes.
>
> Q. Why?
>
> A. Well, if you're going to promote a principal to officer, you can't perfectly hold them accountable to officer performance for at least a couple of years into their tenure as officers.

And we wouldn't have promoted them if we were going to then terminate them. That's sort of inconsistent behavior, management behavior. So by definition in our model, we really had to exempt them from that process. Now, the model is more dynamic than that because we knew we were going to promote certain people, if in fact we did. I don't know whether we did promote certain people in October, but I, we did, the model would have — we would have — we would have built the economic model and the leverage model assuming those people were going to be officers. And so therefore, other people, less productive people, would have to go. So it was a constant tension, when you're in a declining business, as to how many to promote, how many not to promote, so forth.

Q. But nonetheless, the desire to continue promoting people continues to exist, even in a declining environment?

A. Right, that's correct.

Q. Why is that?

A. Because if the young people in the organization don't see a future, they're going to leave, number one. Number two, the younger people in the organization looked at the officers in the organization in the mess that it was in. So the younger people, right or

> wrong, the younger people in the organization look at the officers and say, these are the people who put us in the position we're in now. They can't be that good. So a) in order to provide — keep the younger people from leaving, and b) presumably to refresh the officer group, you've got to have people coming in. So that's the reason for it.

Ransom argues that Gray's statements that he sought to "keep the younger people from leaving" and wanted to "refresh the officer group" are direct evidence that CSC discriminated against him because of his age. We disagree. Gray's testimony does not create an inference that it fired Ransom because of his age. Rather, Gray testified about the "promote and eliminate" dynamic that had "always" been in play at the companies where he worked, including CSC, A.T. Kearney and Morgan Stanley. Under this dynamic, companies promote principals to officers and then continuously eliminate the worst performing officers to make room for future officers. These comments may be viewed as general observations about corporate behavior rather than as a direct explanation about Ransom's termination.

Moreover, in this excerpt Gray was not speaking of younger officers, but of younger people in the organization who were not yet in the same high-level, high-salary position as Ransom. Ransom earned well into the six-figure range, and as a highly-paid executive was held to a higher standard — a standard that younger people in the company would someday hope to achieve. He apparently did not meet that standard — see *infra* at 7 — and thus was fired.

Appendix A

While Ransom argues that we should interpret Gray's statements about "younger people" as really meaning "younger officers," it would be unreasonable to do so for two reasons. First of all, Gray did not say "younger officers" or even "younger employees" — he said "younger people in the organization." Because Gray's statement specifically identified the comparative class of employees — those younger people in the organization — it is unreasonable to read it in the contradictory fashion proffered by Ransom — as younger officers. Second, in context, it is unreasonable to interpret "younger people in the organization" as "younger officers" because as the above extensive excerpt demonstrates, albeit unartfully, Gray was juxtaposing officers with non-officers. The officers were supposed to set an example — a standard — that would encourage, not discourage, the younger people about their future in the organization.

Nor does the "refresh the officer pool" comment create a reasonable inference of age discrimination because the word "refresh" does not have an age-based connotation. *See, e.g., Beatty v. Wood*, 204 F.3d 713 (7th Cir. 2000) (employer's statement that they needed "new blood," does not in isolation evidence age-based discriminatory animus). Moreover, nothing in the record creates an inference that Gray meant that he wanted to "refresh" the officer pool with "younger" employees but rather with "newer" employees, including lateral hires. In fact, Ransom's own appointment as an officer only one year earlier, when he was 55, demonstrates that refresh meant new officers, not younger. Thus, we conclude that Gray's "refresh" comment does not reasonably create an impression of age-based animus, and therefore, Ransom's direct case fails. *See, e.g., Fortier v. Ameritech Mobile*

Communications, Inc., 161 F.3d 1106, 1113 (7th Cir. 1998) (the term "new blood" in the abstract simply means a change and is not direct evidence of age discrimination).

Ransom also attempts to prove his age discrimination case under the *McDonnell Douglas* burden-shifting method. Under this method, Ransom must establish a prima facie case of discrimination. If he does, the burden is for CSC to produce evidence of a legitimate non-discriminatory reason for Ransom's termination. Ransom, who still has the burden to prove discrimination, must then present evidence of pretext — that the proffered reason was not genuine. *Adreani v. First Colonial Bankshares Corp.*, 154 F.3d 389, 393 (7th Cir. 1998).

To establish a prima facie case of age discrimination, Ransom must present evidence that he is in the protected class, i.e. age 40 or older; that he was performing his job satisfactorily; that he was discharged; and that similarly situated, substantially younger employees were treated more favorably. *Fisher v. Wayne Dalton Corp.*, 139 F.3d 1137, 1141 (7th Cir. 1998). CSC argues that Ransom cannot establish either that he was performing his job satisfactorily, or that similarly situated significantly younger employees were treated more favorably, and thus that Ransom has failed to make a prima facie case. We will bypass the prima facie case (and thus this dispute) however, because as discussed below, CSC has presented evidence of a legitimate non-discriminatory reason for Ransom's termination, and there is no evidence of pretext. *See Abioye v. Sundstrand Corp.*, 164 F.3d 364, 368 (7th Cir. 1998) ("When the defendant has proffered an explanation for termination that the court determines to be non-pretextual, the court may avoid

deciding whether the plaintiff has met his prima facie case and instead decide to dismiss the claim because there is no showing of pretext.").[1]

Specifically, CSC presented evidence that it terminated Ransom because he failed to meet CSC's expectations, and given the declining market, it needed to reduce the number of high-paid officers. CSC presented evidence that based on the six months during fiscal year 1997 that Ransom worked for CSC as an employee, he had a sales target of $2.5 million but only managed revenue of $242,338. Then in fiscal 1998 Ransom managed and sold only $250,848 for the first five months, while his target for the year was $6 million. Thus he was over $2 million short in 1997 and was way behind the pace for his annual target after five months in 1998. Ransom's failure to meet a sales quota is a legitimate, non-discriminatory reason supporting his termination. *Fairchild v. Forma Scientific, Inc.*, 147 F.3d 567, 572 (7th Cir. 1998).

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1. Ransom pointed to two younger officers, Gary Moe and Sandra Tuck, who he contends performed worse than he, but who were not terminated. CSC contends that those officers were "not similarly situated." As to Moe, CSC asserts that he was not similarly situated to Ransom because, even though his performance was poorer than Ransom's, he was a leader in the growing information technology practice and possessed expertise which CSC needed. CSC argues that Tuck was also not similarly situated because she was off work, or soon to be off work in connection with the adoption of a child, and CSC believed this to be an inappropriate time to terminate her. We need not decide whether these individuals are similarly situated to Ransom, however, because as discussed above, this issue only goes to the prima facie case, which we are bypassing because CSC has presented evidence of a legitimate non-discriminatory reason for terminating Ransom.

Ransom responds by challenging the way CSC measured his performance. He argues that because he was not Vice President for the entire fiscal year 1997, CSC should take into account the revenues he managed for CSC while an independent contractor, and this would bring his total to $733,000. Ransom also argues that he negotiated contracts in August 1997 which totaled more than $1,930,000, and that CSC should also have considered these lucrative deals.

However, as this court has often stated, it does not sit as a super personnel department to review an employer's business decisions. *McCoy v. WGN Continental Broadcasting Co.*, 957 F.2d 368, 373 (7th Cir. 1992). And "[i]t is no business of a court in a discrimination case to decide whether an employer demands too much of its workers." *Coco v. Elmwood Care, Inc.*, 128 F.3d 1177, 1179-80 (7th Cir. 1997). In fact, it is not even the court's concern that an employer may be wrong about its employee's performance, or be too hard on its employee. *McCoy*, 957 F.2d at 373. Rather, the only question is whether the employer's proffered reason was pretextual, meaning that it was a lie. *Wolf v. Buss (America) Inc.*, 77 F.3d 914, 919 (7th Cir. 1996). Thus, Ransom's attack on the way CSC calculated his sales figures gets him nowhere as long as the company's reliance on those calculations was in good faith. *See Green v. National Steel Corp., Midwest Div.*, 197 F.3d 894, 900 (7th Cir. 1999) ("It is 'a distraction' for [the plaintiff] to argue about the accuracy of [the employer's] assessment of her involvement in the alleged behavior because that is not the determinative issue."). *See also, Bahl v. Royal Indemnity Co.*, 115 F.3d 1283, 1291-92 (7th Cir. 1997). Nor is it evidence of pretext that some members of the management team believed that

Ransom should not yet be terminated. *See Jordan v. Summers*, 205 F.3d 337 (7th Cir. 2000) (concluding that the fact that one panel member rated the plaintiff as "excellent" does not prove pretext, but merely that the other panel members were mistaken). In short, Ransom has failed to present any evidence that CSC's proffered reason was a lie, and not merely a mistake, *id.*, and therefore, Ransom has failed to present any evidence of pretext. Accordingly, CSC was entitled to summary judgment under the indirect method as well as the direct method.

III. Conclusion

Ransom's time as a high-paid CSC executive was short, but the shortened duration was not due to his age. Rather CSC presented evidence that its declining business environment required it to cut costs by eliminating some of its top executives whose performances did not justify their (corporate) existence. Because Ransom failed to present evidence of pretext, he cannot succeed on an indirect case under the ADEA. Ransom also failed to present direct evidence of age-based animus, and therefore he cannot succeed under the direct method. Accordingly, the district court properly granted CSC summary judgment. We AFFIRM.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B — MEMORANDUM OPINION AND ORDER, MINUTE ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED JULY 14, 1999

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 98 C 0244

HONORABLE DAVID H. COAR

JAMES H. RANSOM,

Plaintiff,

v.

CSC CONSULTING, INC. d/b/a CSC INDEX,

Defendant.

MEMORANDUM OPINION AND ORDER

Before this court is Defendant CSC Index's ("defendant" or "CSC") motion for summary judgment on Plaintiff James H. Ransom's ("plaintiff" or "Ransom") claim arising under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ("ADEA"). For the following reasons, defendant's motion is GRANTED and all other motions are denied as moot.[1]

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1. The plaintiff also filed a motion for partial summary judgment on defendant's third affirmative defense that the plaintiff (Cont'd)

Appendix B

Statement of Facts

This case is brought by the plaintiff, James Ransom, under the Age Discrimination in Employment Act, or the ADEA, based upon his termination from the position of Vice President of CSC in September of 1997. CSC is a management consulting business with various offices across the United States. (Pl's Complaint, ¶ 2). Ransom began working with CSC in 1993, first as an "affiliate" (i.e. as an independent contractor for CSC) and then in 1996 as a Vice President in CSC's Chicago office. (Dft's 12(M) Stmt. ¶¶ 3, 4, 8). In these positions with CSC, Ransom held management responsibilities but was not involved with sales of contracts. (Dft's 12(M) Stmt. ¶¶ 9, 10).

In September of 1996, when Ransom accepted the offer from CSC to serve as Vice President, he and CSC agreed to certain performance incentives. In fiscal year 1997 ("FY1997", lasting April, 1996 until March 1997), Ransom was to receive a base salary of $360,000. If Ransom managed revenues of $4 million during FY1997, then he would have received an individual performance-based incentive of $80,000; if Ransom managed $5 million, he would have received $160,000. His total "target compensation" was

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(Cont'd)
failed to comply with 29 U.S.C. § 633(b) by not filing with the Illinois Department of Human Rights ("IDHR") as well as the EEOC. The EEOC and the IDHR have a work sharing agreement and therefore a plaintiff only has to file with one agency. (Pl's Ex. H). In any case, Ransom has protected his rights by filing with both the EEOC and the IDHR, and thus the plaintiff's motion for partial summary judgment is granted. (Pl's Ex. G).

$656,000, prorated based on the six and half months left in FY1997 when he was hired as Vice President. (Dft's 12(M) Stmt. ¶ 8; Ransom's Depo., pp. 25-27).

At the end of FY1997 (March of 1997), Douglas Gray ("Gray"), the President of CSC, announced a "turnaround strategy" for CSC in order to strengthen the capability of CSC officers and "remove low producers." (Dft's 12(M) Stmt. ¶ 14). Around that time, four Vice Presidents in charge of sales were eliminated and the remaining officers of CSC were required to be in charge of both management and sales of projects, thus eliminating the split between the two responsibilities. (Dft's 12(M) Stmt. ¶¶ 15, 16). When these changes went into effect at the beginning of FY1998 (April of 1997), Ransom was assigned to report to a new supervisor, Chuck Callan, who was based in CSC's New York office. (Dft's 12(M) Stmt. ¶¶ 16, 17). For FY1998, Ransom was given a new set of performance incentives: if he managed and sold $6 million in revenue, he would receive an individual performance-based incentive of $118,000. His total target compensation for FY1998 was $625,000. (Dft's 12(M) Stmt. ¶ 20).

In July of 1997, CSC's management team[2] decided to eliminate poor performing officers from the company. (Dft's 12(M) Stmt. ¶ 24). In order to evaluate the performance of the officers, the management team looked at each officer's

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2. Members of the CSC management team included Gray and Callan as well as Joe DeGennero, Vince DiBianca, Fred Sturdivant, Dave Robinson, Jim Kennedy, Mike Weiner, and Leslie Mawhinney. (Dft's 12(M) Stmt. ¶ 25). Their ages in July of 1997 were 52, 41, 49, 52, 59, 51, 51, 51, and 47 respectively. (Dft's 12(M) Stmt. ¶ 26).

performance targets for FY1998, progress in achieving those goals, and revenues for FY1997. (Dft's 12(M) Stmt. ¶¶ 27, 28). There was no written policy on how those evaluations would take place or the reductions would be made. (Pl's 12(N) Resp. ¶ 27).

After the evaluation of officers was completed, Vince DiBianca ("DiBianca") was assigned as Ransom's "coach." (Dft's 12(M) Stmt. ¶ 31). In August of 1997, Ransom, Callan, and DiBianca met to discuss Ransom's revised performance goals, which was to achieve a fiscal year end billing rate of $500,000 a month in revenue managed and sold, with a goal of $300,000 a month by October of 1997. (Dft's 12(M) Stmt. ¶ 33). Before this meeting, Ransom had sent a memo to Callan stating that Ransom defined success for himself "as positioning myself to be able to make a substantial contribution to the firm's success (in this market) over the next 10 years, not my ability to sell and manage $6m this one year." (Dft's 12(M) Stmt. ¶ 35).

Ransom and CSC disagree on the performance of Ransom during FY1997 and FY1998. CSC argues that for FY1997, Ransom only managed revenues totaling $242,338. (Dft's 12(M) Stmt. ¶ 13). Ransom argues that he was not Vice President for the entire FY1997, and thus CSC should take into account the revenues he managed for CSC while an affiliate, bringing his year-end total to $733,000. (Pl's 12(N) ¶ 12). While CSC argues that for the first three months of FY1998 (April, May and June of 1997), Ransom only sold and managed $109,516 worth of revenue, Ransom argues that he sold and managed $178,662. (Dft's 12(M) Stmt. ¶ 36; Pl's 12(N) Resp. ¶ 36). Ransom also argues that

in August of 1997 he obtained contracts from ABN AMRO that had projected billings totaling more than $1,930,000, and was also pursuing other lucrative contracts with several other organizations. (Pl's 12(N) Stmt. ¶¶ 97, 98, 99, 101). CSC responds that these contracts were not executed and thus CSC did not include them in their evaluation. (Dft's 12(N) Resp. ¶ 100).

On September 19, 1997, CSC terminated Ransom. (Dft's 12(M) Stmt. ¶ 44; Pl's 12(N) Stmt. ¶ 104). In response to his termination, Ransom wrote a memorandum to Callan, stating that he had sold two projects that would generate $2,910,000 of revenue and that he had prospects of sales on nine other projects with a value of $6.8 million. (Dft's 12(M) Stmt. ¶ 47). However, CSC argues that Ransom worked with other officers on these prospective sales and thus would have to split the sales credit for any sale that occurred. (Dft's 12(M) Stmt. ¶ 48).

Ransom claims that CSC fired him not because of his performance, but because of his age. (Pl's Complaint, ¶ 19). Ransom was born on November 29, 1940 and was 56 at the time of his termination. (Dft's 12(M) Stmt. ¶ 71). Ransom disputes whether Gray made comments that directly evidence his bias towards young employees. For example, Gray stated that "if younger people in the organization don't see a future, they're going to leave." (Gray's Depo. p. 100; Pl's 12(N) Stmt. ¶ 80). In addition, he said, "the younger people in the organization looked at the officers in the organization as the ones responsible for putting the organization in the mess that it was in . . . right or wrong . . ." (Gray's Depo., p. 100; Pl's 12(N) Stmt. ¶¶ 81, 82). Ransom contends that at least

four other officers had performances similar to his own but were not terminated. Those officers are John Ebersole (D.O.B. 10/21/59), James Cook (D.O.B. 8/8/52), Robert Suh (D.O.B. 10/29/61), and Alan Weyl (D.O.B. 11/14/45). (Dft's 12(M) Stmt. ¶ 65).

CSC claims that the Ransom termination decision was not made on age, but on "dispassionate economic criteria." (Pl's 12(N) Resp. ¶ 58; Gray's Depo., p. 81). As of July of 1997, CSC had 86 officers, 69 of whom where age 40 or older. Eight were older than Ransom. (Dft's 12(M) Stmt. ¶ 63). As to the four officers with similar performances to Ransom who were not terminated, CSC argues that each performed significantly better than Ransom and had created lucrative future arrangements with clients. For example, John Ebersole managed and sold $5,621,360 for FY1997 and was slated to take over the utility practice. (Dft's 12(M) Stmt. ¶¶ 66, 72). James Cook had managed and sold over $3,158,103 in FY1997 and moved to another job with the Pinnacle Alliance. (Dft's 12(M) Stmt. ¶¶ 67, 74). Robert Suh managed and sold over $2,757,165 for FY1997 and had created lucrative projects with two large clients, Ameritech and McDonald's. (Dft's 12(M) Stmt. ¶¶ 68, 73). Alan Weyl had sold and managed over $1,058,259 for the eight months he had been with CSC during FY1997 and had created a significant client relationship with Golden Books. (Dft's 12(M) Stmt. ¶¶ 69, 75). Ransom responds that the CSC has stated that the accounting data from FY1997 is unreliable and has only been created for the purposes of this lawsuit. (Pl's 12(N) Resp. ¶¶ 72, 73, 74, 75).

Ransom filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on

November 14, 1997 and filed this case in federal court on January 15, 1998. (Pl's Ex. D, E). Now before this court is defendant's motion for summary judgment.

Standard for Summary Judgment

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter if law." Fed.R.Civ.P. 56(c); *Cox v. Acme Health Serv., Inc.*, 55 F.3d 1304, 1308 (7th Cir. 1995). A genuine issue of material fact exists for trial when, after viewing the record and all reasonable inferences drawn from it in a light most favorable to the non-movant, a reasonable jury could return a verdict for the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Hedberg v. Indiana Bell Tel. Co.*, 47 F.3d 928, 931 (7th Cir. 1995). The party moving for summary judgment bears the initial burden of demonstrating that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Hedberg*, 47 F.3d at 931. If this burden is met by the movant, the non-movant must then set forth specific facts to show that there is a genuine issue for trial. Fed.R.Civ.P. 56(e) ; *Celotex*, 477 U.S. at 324. While affidavits, depositions and interrogatories are acceptable evidence for the non-movant to present, these are not the exclusive forms of evidence that can be used in responding to summary judgment. Wright, Miller & Kane Federal Practice and Procedure: Civil 3d § 2721. In deciding a motion for summary judgment, the court must read the facts in a light most favorable to the non-movant. *Cuddington*

v. Northern Ind. Public Serv. Co., 33 F.3d 813, 815 (7th Cir. 1994). However, Rule 56(c) mandates the entry of summary judgment against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and in which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. A scintilla of evidence in support of the non-movant's position is not sufficient to oppose successfully a summary judgment motion: "there must be evidence on which they jury could reasonably find for the [non-movant]." *Anderson*, 477 U.S. at 250.

Analysis

The Age Discrimination in Employment Act ("ADEA") makes it unlawful for any employer to discharge or otherwise discriminate against an individual on the basis of age. 29 U.S.C. § 623(a). The legislation protects workers who are between the ages of forty and seventy years. 29 U.S.C. § 631(a). To succeed on an ADEA claim, a plaintiff must show that his or her termination or adverse employment action would not have occurred "but for" his or her employer's motive to discriminate on the basis of the employee's age. *Fuka v. Thomson Consumer Electronics*, 82 F.3d 1397, 1402 (7th Cir. 1996), citing *Taylor v. Canteen Corp.*, 69 F.3d 773, 779 (7th Cir. 1995) and *Gehring v. Case Corp.*, 43 F.3d 340, 344 (7th Cir. 1994).

It is well established that there are two methods to prove discrimination under the ADEA: through direct proof of discrimination; and through the indirect, burden-shifting method of proof established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). See *Anderson v. Baxter*

Healthcare Corp., 13 F.3d 1120, 1122 (7th Cir. 1994). Under the direct method of proof, a plaintiff may introduce direct or circumstantial evidence of discrimination. *Troupe v. May Department Stores Co.*, 20 F.3d 734, 736 (7th Cir. 1994). Direct evidence is that which can be interpreted as an acknowledgment of the defendant's discriminatory intent, while circumstantial evidence is evidence that can provide a basis for drawing an inference of intentional discrimination. *Id.*

Under the indirect method of burden-shifting established in *McDonnell*, a three-step inquiry is necessary. First, a plaintiff must establish a prima facie case of age discrimination. Once the prima facie case is established, a presumption of discrimination arises, and the burden shifts to the defendant to present evidence of a "legitimate, nondiscriminatory reason" for discharging the plaintiff. In the final step, the burden shifts back to the plaintiff to prove that the reasons offered by the defendant for the termination were not the true reasons, but were a pretext for discrimination. *Adreani v. First Colonial Bankshares Corp.*, 154 F.3d 389, 393-94 (7th Cir. 1998), quoting *Testerman v. EDS Technical Prods. Corp.*, 98 F.3d 297, 302-03 (7th Cir. 1996).

1. Direct Method

Ransom argues that direct evidence of discriminatory intent is demonstrated in Gray's comments on the age of employees. Gray testified in his deposition that if younger people did not see a future, they would leave the company, and younger employees look to the officers, right or wrong, as being responsible for the "mess" the company was in. (Pl's 12(N) ¶ 80). Ransom argues that Gray's mistaken belief

that it is lawful to discriminate against older officers is demonstrated by this testimony. (Pl's Memo in Resp., pp. 11-12).

Direct evidence is that which can be interpreted as an acknowledgment of the defendant's discriminatory intent. *Troupe*, 20 F.3d at 736. Evidence of a decision maker's occasional or stray stereotypical comments about an employee's age is generally insufficient, without more, to establish a violation of the ADEA. *McCarthy v. Kemper Life Ins. Co.*, 924 F.2d 683, 687 (7th Cir. 1991). A nexus must be established between the alleged comments of the decision maker and the employment decision at issue. *Knox v. First National Bank of Chicago*, 909 F.Supp. 569, 573 (N.D. Ill. 1995), citing *Hill v. Burrell Communications Group, Inc.*, 67 F.3d 665, 667 (7th Cir. 1995). The comments of Gray do not create the necessary nexus, for they do not tend to show that Ransom was terminated because of his age. The comments do not refer to the specific employment decision of whether or not to terminate Ransom. Instead, they are only comments on the possible perception of younger employees, not CSC's possible preference for younger over older employees.

2. Indirect Method

a. Prima Facie Case

The first step required of Ransom is to establish a prima facie case of age discrimination. For a prima facie case to be established, the plaintiff must show that: 1) he was in the protected age group of forty to seventy years; 2) he was

performing the job satisfactorily; 3) he was discharged; and 4) younger employees similarly situated to the plaintiff were treated more favorably. *Adreani*, 154 F.3d at 394, citing *Fisher v. Wayne Dalton Corp.*, 139 F.3d 1137, 1141 (7th Cir. 1998) and *Taylor*, 69 F.3d at 779 (7th Cir. 1995). Ransom has established the first and third factors of a prima facie case, for he was in his fifties during the events in question and he was terminated. Therefore, he must show that he was performing his job satisfactorily and that younger employees were treated more favorably.

Ransom argues that there are genuine issues of fact surrounding his job performance. (Pl's Resp., p. 13). Ransom asserts that he had obtained contracts for approximately $2 million worth of new business for the remaining part of FY1998, he was actively pursuing new business opportunities with various corporations, and he was on his way to making his October goal of $300,000 per month. (Pl's Resp., p. 13). However, the evidence shows that not only were the contracts that Ransom allegedly obtained not yet executed, but that Ransom admits himself that he was not meeting his projected goals for the fiscal year. (Dft's Reply, p. 3; Pl's 12(N) ¶¶ 11, 20, 35). Even if Ransom was given full credit for the $2 million in question, he was performing well below his colleagues and was not meeting his target incentives for the year.

Even if Ransom was performing his job satisfactorily, there is no evidence that younger employees were treated more favorably. The four employees that Ransom argued were similarly situated to himself but were not terminated

all out performed Ransom.[3] (Dft's 12(M) ¶¶ 66, 67, 68, 69, 72, 73, 74, 75). Ransom argues that CSC did not adequately credit him for his sales and thus his performance looked artificially lower compared to his younger colleagues. (Pl's Resp., pp. 13-14). But even taking into account what Ransom claims are his additional sales, he would have split these sales with other participating officers, thus bringing him below his performance target. (Dft's 12(M) ¶ 48; Ransom's Depo., pp. 101-02, 122-23; Dft's Ex. A).

b. Legitimate Non-Discriminatory Reason for Termination

Assuming for the sake of argument that Ransom has made a prima facie case of age discrimination, the next step in the *McDonnell* analysis is to determine if CSC had a legitimate, nondiscriminatory reason for terminating Ransom. CSC argues that their reason for terminating Ransom was as part of a reduction-in- force ("RIF") caused by CSC's business condition as well as the low-quality performance of Ransom. (Dft's Memo of Law, p. 11). As discussed above, Ransom was not meeting his performance targets and was performing below the level of his colleagues. An employer does not violate the ADEA by terminating an employee to reduce costs. *Fairchild v. Forma Scientific, Inc.*, 147 F.3d 567 (7th Cir. 1998), citing *Anderson v. Baxter Healthcare Corp.*, 13 F.3d 1120, 1125-26 (7th Cir. 1994).

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3. The only employee who had similar performance numbers to Ransom was Alan Weyl. However, Weyl had only been at CSC for eight months at the time of the comparison and he had already solidified a significant relationship with a lucrative client, Golden Books. (Dft's 12(N) ¶ 69, 75).

However, an employer implementing a RIF may not favor younger employees over older ones by finding new positions only for the younger workers. *Taylor*, 69 F.3d at 780. Therefore, the court must examine the evidence to see whether these reasons given by CSC were a pretext for age discrimination.

c. Pretext

The plaintiff may prove that the defendant employer's proffered reason for his termination was a mere pretext "by showing either that a discriminatory reason more likely motivated the employer or that the employer's proffered explanation is unworthy of credence." *Anderson v. Stauffer Chemical Co.*, 965 F.2d 397, 402 (7th Cir. 1992), quoting *La Montagne v. American Convenience Products, Inc.*, 750 F.2d 1405, 1414 (7th Cir. 1984). However, a plaintiff must show more than the decision was a mistake or the use of bad business judgment. Instead, the plaintiff must show that the reason given was a "lie" or a "phony reason" and that the defendant did not honestly believe the reasons they gave for the termination. *Russell v. Acme-Evans Co.*, 51 F.3d 64, 68 (7th Cir. 1995). In an ADEA case, the court "does not sit as a super-personnel department that reexamines an entity's business decisions. The question is not whether the [employer] exercised prudent business judgment, but whether [the employee] has come forward to refute the articulated legitimate reasons for his discharge." *Wolf v. Buss America, Inc.*, 77 F.3d 914, 920 (7th Cir. 1996), quoting *Dale v. Chicago Tribune Co.*, 797 F.2d 458, 464 (7th Cir. 1986).

In the present case, Ransom does not present evidence that CSC's reasons of downsizing the company as well as

Appendix B

Ransom's poor performance were a pretext for age discrimination. Even with Ransom's revised numbers of his performance, he still performed below his colleagues. Ransom does not argue that CSC was performing well economically or deny that CSC announced the possibility of terminations based upon performance. Therefore, Ransom has not met his burden of showing that CSC's reasons for termination were not legitimate. The defendant's motion for summary judgment is granted.

Conclusion

For the foregoing reasons, Defendant CSC Index's motion for summary judgment on Plaintiff James H. Ransom's claim arising under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., is GRANTED. All other motions are denied as moot and the case is closed.

Enter:

s/ David H. Coar
David H. Coar
United States District Judge

Dated: JUL 14 1999

Appendix B

United States District Court,
Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	David H. Coar
CASE NUMBER	98 C 244
DATE	7/14/1999
CASE TITLE	James H. Ransom vs. CSC Consulting, Inc.

* * *

DOCKET ENTRY:

* * *

(10) ■ [Other docket entry] For the reasons in the Memorandum Opinion and Order, Defendant CSC Index's Motion for Summary Judgment on Plaintiff, James H. Ransom's claim arising under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., is GRANTED. All other motions are denied as moot and the case is closed.

(11) ■ [For further detail see order attached to the original minute order.]

* * * *

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 98 C 244

James H. Ransom

v.

CSC Consulting, Inc.

JUDGMENT IN A CIVIL CASE

* * *

■ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that the Motion of defendant CSC Index for Summary Judgment on plaintiff, James H. Ransom's claim under the Age Discrimination in Employment Act, is GRANTED.

Summary Judgment is hereby entered in favor of the defendant, CSC Consulting, Inc. d/b/a CSC Index and against the plaintiff, James H. Ransom.

Appendix B

All other motions are denied as moot and this case is CLOSED.

Michael W. Dobbins,
Clerk of Court

Date: 7/14/99

s/ Patricia McQurter-Figgs
Patricia McQurter-Figgs,
Deputy Clerk

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED JULY 27, 2000

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

July 27, 2000

Before

Hon. Richard D. Cudahy, *Circuit Judge*

Hon. Daniel A. Manion, *Circuit Judge*

Hon. Diane P. Wood, *Circuit Judge*

No. 99-2967

James H. Ransom,

Plaintiff-Appellant,

v.

CSC Consulting, Inc., d/b/a CSC Index,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division

No. 98-0244

David H. Coar, *Judge*.

Appendix C

ORDER

Plaintiff-Appellant filed a petition for rehearing and petition for rehearing *en banc* on June 23, 2000. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all of the judges on the panel have voted to deny rehearing. The petition is therefore **DENIED**.